

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

IN THE MATTER of the Petition of the)	
Helena Water Department for an Order)	Docket No. 6312
Authorizing Applicant to Increase)	Order No. 4274
Water Rates)	

APPEARANCES

For the Applicant:

C.W. Leaphart, Jr., 1 Last Chance Gulch, Suite 6, Helena, Montana 59601
Al Thelen, City Manager, Civic Center, Helena, Montana 59601

Protestants:

Geoffrey L. Brazier, Montana Consumer Counsel, 330 Fuller Avenue, Helena, Montana 59601

Wesley W. Wertz, appearing pro se and pro bono publico, 326 Washington Drive, Helena, Montana 59601

K. M. Bridenstine, Office of District Counsel, Veterans Administration, Administration Building, Suite 307, Fort Harrison, Montana 59363

Before:

Gordon Bollinger, Chairman
P. J. Gilfeather, Commissioner
Thomas G. Monahan, Commissioner
James R. Shea, Commissioner
George Turman, Commissioner

At a session of the Montana Public Service Commission, Department of Public Service Regulation, held at the Commission's Offices in Helena, Montana, on the 22nd day of July, 1976, the undersigned Commissioners being present and participating, and having under consideration the above-captioned matter; and

IT APPEARING, that the above-entitled application was filed on April 26, 1975; such application, however, lacked supporting data and exhibits, and was not set for hearing until after

the filing of necessary supporting data on or about February 13, 1976; and

IT FURTHER APPEARING, that notice of hearing was given by mailing copies of formal notice to three radio and television stations in Montana and to one newspaper of general circulation in the area affected; and that the first phase of hearing was conducted on February 17, 1976; and

IT FURTHER APPEARING, that at such first phase of the hearing it became evident that the Applicant lacked the necessary data concerning the fixed and variable costs of furnishing a unit of water essential to justify its proposed rate schedules; and, such information being necessary to support an equitable rate structure, the Commission directed that this cost information be furnished, and continued the hearing until March 26 so that the same could be supplied; and

IT FURTHER APPEARING, that notice of continuance of the hearing until March 26 was given by letter to all parties; and that the second phase of hearing was concluded, the case appeared ready for submission to the Commission and Proposed Findings of Fact, Conclusions of Law, and Briefs were ordered; and

IT FURTHER APPEARING, that by letter dated May 6, 1976, Al Thelen, Helena City Manager, disclosed that an audit of the Helena Water Department by the Local Government Services Division of the Department of Community Affairs had revealed a discrepancy in the monthly distribution of the combined monies collected by the City for water and sewer services, and that such discovery would necessitate supplemental proceedings to permit revision of Applicant's Exhibit 5, which depicted the financial position of the Applicant; and that in response to this letter the Commission set a supplemental hearing for July 9 for the purpose of consideration of and cross-examination upon Revised Exhibit 5; and that notice of such hearing was given by letter to all parties and local media; and

IT FURTHER APPEARING, that at the July 9th hearing the Applicant offered Revised Exhibit 5 and immediately sought to amend its contents; and that such procedure left all parties thoroughly confused by the attempted reconciliation and modification of figures; and that a motion to continue the hearing until an understandable Revised Exhibit 5 could be presented was made by Geoffrey L. Brazier and joined in by the other Protestants; and that such motion was granted and the hearing continued until July 23 to permit Applicant to revise said Exhibit; and that at the close of the July 9th hearing a motion by Geoffrey L. Brazier to update Revised

Exhibit 5 using actual 1976 figures was granted; and that a motion to dismiss the case in its entirety was made by Wesley W. Wertz on the grounds and for the reasons that the complex hearing process and the seemingly incomprehensible exhibits violated the due process rights of Helena residents; and that such motion was joined in by the other Protestants and was then taken under advisement by the Commission; and

IT FURTHER APPEARING, that on July 15, 1976, a Memorandum in Support of the motion to dismiss was filed by Wesley W. Wertz; and

IT FURTHER APPEARING, that on July 21, 1976, a Petition for Continuance of the scheduled July 23 hearing was filed by K. M. Bridenstine on the ground and for the reasons that the full audit report of the Local Government Services Division will be published on or before August 13; and that this report will contain material relevant and necessary to a proper determination of the issues presented in this docket; and

IT FURTHER APPEARING, that Applicant did not prefile its Revised Exhibit 5 until the afternoon of Wednesday, July 21, two days prior to said hearing date of July 23, thus preventing the Commission staff from giving the Revised Exhibit its proper study prior to hearing; and

IT FURTHER APPEARING, that a further supplemental hearing would be essential to permit receipt of the testimony of James M. Courtney, who prepared the Local Government Services Report on the Applicant's actual financial condition, and that a further supplemental hearing could only serve to more thoroughly complicate this proceeding;

AND IT FURTHER APPEARING, that the entire hearing process has become so disjointed and the Applicant's case so complex and difficult to follow that the average citizen may be deprived of his rights of due process, and his right to meaningful participation if the hearing process were to proceed.

NOW THEREFORE, after considering the evidence of record herein, the motion of the Protestants to continue and dismiss, the Commission, being fully advised, after due and careful consideration of the testimony and evidence presented, and aware of the procedural complications present in this Docket as well as the complexity of the Applicant's presentation, makes the following Order:

ORDER

IT IS ORDERED, that the Motion for Dismissal made by the Protestants at the July 9th hearing be, and IT IS HEREBY GRANTED.

DONE IN OPEN SESSION this 22nd day of July, 1976, by a vote of 3-1,
Commissioner Gilfeather dissenting.

Dated at Helena, Montana, this 29th day of July, 1976.

BY ORDER OF THE PUBLIC SERVICE COMMISSION:

GORDON BOLLINGER, Chairman

THOMAS G. MONAHAN, Commissioner

JAMES R. SHEA, Commissioner

P.J. GILFEATHER, Commissioner
Voting to dissent

ATTEST:

GAIL E. BEHAN
Secretary

(Seal)

